FILED
2005 NOV -3 PM 4:23
KING COUNTY
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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

180SOLUTIONS, INC., Plaintiff, v. ZONE LABS, L.L.C., Defendant.	No. 05-2-36579-0 SEA COMPLAINT DOUGLASS A. NORTH

For its Complaint against defendant Zone Labs, L.L.C., plaintiff 180solutions, Inc. alleges as follows:

I. PARTIES

1.1 Plaintiff **180solutions, Inc.** ("180") is a corporation organized under the laws of the state of Washington. 180 is licensed to do business in the state of Washington and has, at all times relevant to this action, done business in King County, Washington. 180 has paid all applicable fees and licenses and satisfied all other prerequisites to bringing this action.

1.2 Defendant **Zone Labs, L.L.C.** ("ZoneLabs") is a limited liability company with its principal place of business in San Francisco, California. ZoneLabs is owned or substantially owned by Check Point Software Technologies Ltd.

ORIGINAL

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EXHIBIT
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II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction under RCW 4.28.185 because ZoneLabs transacted business within the state and/or committed the tortious and other acts complained of in this Complaint within the state.

2.2 Venue is proper in this Court pursuant to RCW 4.12.020.

III. FACTUAL AVERMENTS

180's Business

3.1 180 is a publisher of software and other content that individuals can access over the Internet. 180's products are offered to users free of charge and are sponsored by advertising that users agree to view as a condition of using the products. 180's products provide the user with access to a wide range of electronic content (such as games, music, video, a CD-burning application, an instant messaging application, television and movie listings, etc.), all of which is provided to users free of charge because of advertising revenue. Much like other innovative Internet content companies such as Google and Microsoft, 180 has helped develop an advertising-based business model that allows it to generate revenue from original content, while continuing to allow that content to be made freely available to users.

3.2 180's system of supporting free content and software with advertising is intended to mirror the advertising system that has been successful in the broadcast television market. Similar to network television, 180 provides its users with unlimited free access to its entertainment content (games and software applications) in exchange for the user's agreement to view a limited number of advertisements per day from 180's sponsors. While fewer ads are displayed to users than those shown while watching network television, 180's ads are presented to the user at the moment he or she is searching for a related product or service online. In this way, 180's advertisements are more relevant to users and, therefore, more valuable to advertisers.

3.3 180's advertisements are generated on the user's computer by one of two

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software applications that users install as an agreed condition of receiving sponsored software or content: Zango Search Assistant ("Zango") and 180search Assistant ("180sA"). A few times per day, these applications will direct the subscriber to a sponsor's website based on the website the user is viewing or in response to a search that the user makes. For example, if a user searches using the word "books," the applications might direct the user to the webpage of a book merchant.

180's Efforts To Protect User Privacy

3.4 180 has invested considerable money, time and effort in designing Zango and 180sA to allow advertisements to be targeted to the user, without invading or compromising the user's privacy.

3.5 Zango and 180sA operate by displaying targeted ads based on keywords utilized by the user. The list of keywords that are linked to the triggering of an ad are downloaded onto the user's machine with the application, and the user has opted on an informed basis to receive the application. The application then "monitors" the user's activities only to the extent that it looks for the use of one of the keywords contained in the respective application's inventory of keywords. If the user makes use of a keyword in the inventory, then, and only then, does the application communicate with 180's servers. It does so for the limited purpose of retrieving the appropriate ad for display on the user's machine.

3.6 The transmission and request for the ad package is entirely anonymous. Each 180 user is assigned an anonymous User Identification Number ("UIN"). When the request for an ad is received, the transmission can only be identified by the UIN. 180 does not retain information linking the UIN to a user or his or her personally identifiable information. In short, 180 does not have the means to identify which UIN belongs to which user. Thus, 180 only collects and uses browsing habits to the extent it aggregates the number of hits on a given keyword from its anonymous users.

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ZoneLabs' "ZoneAlarm" Software

3.7 On information and belief, defendant ZoneLabs is in the business of developing and marketing various computer protection and security software programs. One such program is the ZoneAlarm Anti-Spyware application, which is proclaimed by ZoneLabs to be "Essential Protection from Spyware and Hackers." The ZoneAlarm Anti-Spyware application purports to provide "multi-layered security to prevent spyware from infecting your computer and to detect and remove spyware that's already present on your system."

3.8 On information and belief, ZoneLabs has sold thousands of licenses to operate its ZoneAlarm Anti-Spyware application at an average price per unit of $20-30 (US).

3.9 On information and belief, ZoneLabs has caused, through false and misleading statements about 180's products, thousands of 180's customers to remove or otherwise uninstall Zango and/or 180sA. 180 has been damaged by the wrongful removal of its applications caused by ZoneLabs' tortious conduct.

3.10 Additionally, ZoneLabs is aware that its false and misleading statements about 180's products that are contained in the ZoneAlarm product have caused certain content vendors to refuse to contract with 180, harming 180's business and subscribers.

ZoneAlarm Creates The Misimpression That 180's Products Are Spyware

3.11 ZoneAlarm is advertised by ZoneLabs as an anti-spyware application.

3.12 ZoneLabs has a financial incentive to ensure that ZoneAlarm identifies products as spyware applications on its user's machines. The ZoneAlarm product is not perceived to have value to consumers unless it does its purported job – *i.e.*, identify alleged spyware. It is, therefore, in ZoneLabs' interest to design the ZoneAlarm product to frighten consumers into believing that spyware resides on their computers, even if it does not.

3.13 ZoneAlarm identifies both Zango and 180sA as a potential "threat to [the user's] security and/or privacy," and it classifies both products as high risk. The "high risk"

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classification is false and at odds with the industry norm and leading scanning applications, such as Symantec, which recognize that 180's products do not pose a privacy risk to users.

3.14 The term "spyware" carries a common meaning in the industry that includes as its key element a compromise of the user's privacy. Specifically, spyware is typically understood to involve collecting, without consent, a user's personally identifiable information and Internet browsing habits. As is detailed above, 180's products are consent-based applications that are carefully designed to protect the user's privacy – even to the extent that 180 cannot link the UIN to a specific user.

3.15 ZoneAlarm's improper designation of Zango and 180sA as spyware is harmful to 180's business and has caused and continues to cause significant damages to 180.

ZoneAlarm's Classifications Are Based On Inaccurate Assumptions

3.16 ZoneAlarm makes the following false statement about Zango and 180sA: "DANGEROUS BEHAVIOR [Zango or 180sA] is trying to monitor your mouse movements and keyboard strokes." On information and belief, the basis for ZoneAlarm's inaccurate statement is the detection of 180's products' use of a particular programming function (the Windows API Hook, or SetWindowsHookExe) in connection with their operation. Because the Windows API Hook function can be used in connection with the monitoring of mouse movements and keyboard strokes, ZoneAlarm mistakenly assumes that that is the reason for its employ by 180's products, despite ZoneLabs having been advised by 180 to the contrary. ZoneAlarm's baseless assumption is incorrect and damaging to 180, as it casts 180 and its products in a false light.

3.17 Based on these false conclusions about 180's products, ZoneAlarm assigns a high risk status and states as follows about Zango and 180sA: "It is recommended that you delete this application immediately because it constitutes a privacy risk, and has no known usefulness." On information and belief, thousands of users have quarantined, deleted or

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otherwise disabled Zango and/or 180sA based on ZoneAlarm's false representations about the products.

ZoneLabs' False and Defamatory Publications

3.18 ZoneLabs' promotion and sale of ZoneAlarm, and the false and misleading statements attendant with that promotion and sale, have damaged 180 and continue to harm 180's reputation and goodwill. As a result of ZoneLabs' false and defamatory publications concerning 180, 180 incurred injuries to its reputation and credit and was (and is being) deprived of revenue and profits which it otherwise would have made in an amount to be proven at trial.

IV. CAUSES OF ACTION

Trade Libel

4.1 180 incorporates herein and realleges the allegations set forth in Sections I through III above.

4.2 Through the conduct described above, ZoneLabs has made false and disparaging statements about 180's products.

4.3 ZoneLabs publishes its false and disparaging statements about 180's products to all computer users that install and use ZoneAlarm.

4.4 By publishing and distributing these false and disparaging statements about 180's products, ZoneLabs has caused substantial harm to 180, including injury to 180's reputation and direct and ongoing financial injury. As such, 180 seeks an injunction against ZoneLabs to prohibit this harmful conduct, and is entitled to an award of compensatory damages against ZoneLabs in an amount to be ascertained at trial.

Tortious Interference With Business Expectancies

5.1 180 incorporates herein and realleges the allegations set forth in Sections I through III above.

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5.2 At all times relevant herein, 180 had a valid business expectancy in the revenues from advertising generated by Zango and 180sA users.

5.3 In addition, ZoneLabs was aware that 180 was in discussion with content-providers and that certain transactions were delayed, postponed and/or precluded due specifically to ZoneLabs' improper classification and representations about 180's products. 180 had (and has) a valid business expectancy in the transactions with the certain content-providers.

5.4 ZoneLabs was aware of 180's business expectancies.

5.5 ZoneLabs, by its conduct alleged herein, intentionally interfered with 180's business expectancies, inducing and causing termination of such expectancies by falsely characterizing 180's products for the commercial benefit of ZoneLabs.

5.6 ZoneLabs' interference with 180's business expectancies was for an improper purpose, *i.e.*, to unlawfully benefit and increase ZoneAlarm's share of the computer protection and security software program market by falsely characterizing 180's products and profiting from the unfounded fear created by the false characterizations.

5.7 ZoneLabs' unlawful interference proximately resulted in damage to 180, in an amount to be proven at trial.

RCW 19.86.020: Unfair and Deceptive Trade Practices

6.1 180 incorporates herein and realleges the allegations set forth in Sections I through III above.

6.2 ZoneLabs engaged in unfair and deceptive acts and practices as described above, by mischaracterizing 180's products, and by fabricating, without foundation and without the benefit of even minimal diligence (or perhaps in spite of said diligence), a "threat" to the user's privacy. ZoneLabs' acts were intended to, and actually did, deceive a substantial portion of the public.

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6.3 ZoneLabs' unfair and deceptive acts and practices occurred in trade and commerce through the advertisement and sale of ZoneAlarm across the nation and through the assistance of distributors.

6.4 The public interest has been affected by ZoneLabs' intentional and deliberate acts, as described above.

6.5 ZoneLabs' unfair and deceptive acts and practices have proximately resulted in injury to 180's business in the form of reduced revenue, harm to business reputation, and loss of goodwill.

Unjust Enrichment

7.1 180 incorporates herein and realleges the allegations set forth in Sections I through III above.

7.2 ZoneLabs, in its false and misleading statements about 180's products, benefited therefrom.

7.3 It would be inequitable for ZoneLabs to retain the benefit of the unfounded fear it created through its unjustified maligning of 180's products. ZoneLabs should be required to pay restitution to 180 in the amount of ZoneLabs' ill-gotten gains resulting from its misconduct.

7.4 ZoneLabs should be required to account for, and disgorge, all revenues it received from sales of ZoneAlarm generated by the unfounded fear created by ZoneLabs among consumers stemming from the false statements concerning the functionality of 180's products, and ZoneLabs' baseless creation of the specter of a "threat" to the user's privacy.

V. RELIEF REQUESTED

Having set forth its Complaint against defendant ZoneLabs, plaintiff 180 respectfully requests that the Court grant 180 the following relief:

A. An award of monetary damages in such amount to be proven at trial including interest as is permitted by law.

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B. An accounting and disgorgement of revenues that were diverted to ZoneLabs by means of its capitalization on the fear it created concerning 180's products.

C. Additional damages, including three times actual damages, as permitted by law.

D. For an injunction against ZoneLabs, enjoining it from:

a) categorizing 180's products as spyware or otherwise associating 180's products with spyware;

b) making false or inaccurate statements about 180's products; and

c) characterizing 180's products as posing a "threat" to the user's privacy.

E. An award of 180's costs and reasonable attorneys' fees as permitted by law.

F. Leave to amend this Complaint based on facts discovered, pled, or offered.

G. Such other relief as the Court deems just and equitable.

Dated this 3rd day of November, 2005.

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